

HONORABLE RONALD B. LEIGHTON

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

ELAINE L. CHAO, Secretary of Labor,
United States Department of Labor,

Plaintiff,

v.

PAUL MATHESON, an individual dba
BABY ZACK'S SMOKE SHOP; CATHY
MATHESON, an individual; and FELICIA
MATHESON, an individual,

Defendants.

Case No. C06-5361 RBL

ORDER ON DEFENDANTS' MOTION
TO DISMISS UNDER RULE 12(b)

INTRODUCTION

This matter comes before the Court on defendants Paul, Cathy and Felicia Matheson's Fed. R. Civ. P. 12(b) motion to dismiss for lack of subject matter jurisdiction, lack of personal jurisdiction, insufficiency of process, insufficiency of service of process, and failure to state a claim on which relief can be granted. For the reasons set forth below, the defendants' motion is DENIED.

BACKGROUND

Plaintiff Elaine Chao, the Secretary of Labor, seeks to enjoin the defendants from continuing violations of the Fair Labor Standards Act by failing to pay employees overtime compensation, and to enforce a judgment against them for prior failures to pay overtime compensation.

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2 Paul and Cathy Matheson are a married couple who run Baby Zack's Smoke Shop in Milton.
3 Felicia Matheson is Paul and Cathy Matheson's daughter-in-law and an employee of Baby Zack's, whose
4 supervisory duties include signing payroll checks. According to the Secretary's complaint, the defendants
5 have been employing their employees for weeks that last longer than 40 hours without paying them the
6 required time and a half compensation in violation of Sections 7 and 15(a)(2) of the FLSA. Complaint,
7 Dkt. #1-1, ¶ VIII. The Secretary also alleges that the defendants violated 29 U.S.C. §§ 211 and 215(a)(5)
8 by "failing to make available for inspection records of the persons employed . . . and of the wages, hours
9 and other conditions and practices of employment [they maintained]." Complaint, Dkt. #1-1, ¶ IX.
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12 Defendants now move to dismiss this action for a multitude of reasons, all of which are unavailing.

13 DISCUSSION

14 **1. Motion to Dismiss for Lack of Subject Matter Jurisdiction**

15 As an initial matter, defendants move to dismiss for lack of subject matter jurisdiction under Rule
16 12(b)(1). A complaint must be dismissed under this rule if, considering the factual allegations in the light
17 most favorable to the plaintiff, the action: 1) does not arise under the Constitution, laws, or treaties of the
18 United States, or does not fall within one of the other enumerated categories of Article III, Section 2 of the
19 Constitution; 2) is not a case or controversy within the meaning of the Constitution; or 3) is not one
20 described by any jurisdictional statute. *Baker v. Carr*, 369 U.S. 186, 198 (1962); *D.G. Rung Indus., Inc. v.*
21 *Tinnerman*, 62 F.Supp. 1062, 1063 (W.D. Wash. 1986); *see* 28 U.S.C. §§ 1331 (federal question
22 jurisdiction) and 1346 (United States as a defendant). When considering a motion to dismiss pursuant to
23 Rule 12(b)(1), the Court is not restricted to the face of the pleadings, but may review any evidence to
24 resolve factual disputes concerning the existence of jurisdiction. *McCarthy v. United States*, 850 F.2d 558,
25 560 (9th Cir. 1988), *Biotics Research Corp. v. Heckler*, 710 F.2d 1375, 1379 (9th Cir. 1983). A federal
26 court is presumed to lack subject matter jurisdiction until plaintiff establishes otherwise. *Kokkonen v.*
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2 *Guardian Life Ins. Co. of America*, 511 U.S. 375 (1994). Therefore, the plaintiff bears the burden of
3 proving the existence of subject matter jurisdiction. *Stock West, Inc. v. Confederated Tribes*, 873 F.2d
4 1221, 1225 (9th Cir. 1989).

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6 This Court has subject matter jurisdiction over this action. In order for the Secretary's complaint
7 to arise under a law of the United States, as established by *Baker*, it must state only that federal law creates
8 a cause of action. *Franchise Tax Board of California v. Construction Laborers Vacation Trust for S.*
9 *Cal.*, 463 U.S. 1, 27-28 (1983). Here, the Act creates a cause of action that may be brought "in any
10 Federal or State court." 29 U.S.C. § 216(b). 29 U.S.C § 217 also gives the Court jurisdiction to grant
11 injunctions. Therefore, the Court has subject matter jurisdiction over the Secretary's claims. The
12 defendants' motion to dismiss for lack of subject matter jurisdiction is DENIED.
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14 **2. Motion to Dismiss for Failure to State a Claim**

15 Defendants argue that the Secretary has failed to state a claim for which relief can be granted under
16 Rule 12(b)(6). A court may dismiss a claim if it appears beyond doubt that the plaintiff can prove no set of
17 facts to support the claim that would entitle the plaintiff to relief. *Keniston v. Roberts*, 717 F.2d 1295,
18 1300 (9th Cir. 1993), *citing Conley v. Gibson*, 355 U.S. 41, 45-56 (1957). Here, the Secretary alleges that
19 she has already obtained a judgment against the defendants in a previous action. If the Secretary is able to
20 prove facts she alleges, she would be entitled to relief. She has also alleged facts supporting her claim for
21 an injunction. Therefore, defendants' motion to dismiss for failure to state a claim is DENIED.
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24 **3. Motion to Dismiss for Lack of Personal Jurisdiction**

25 Defendants move to dismiss for lack of personal jurisdiction under Rule 12(b)(2). "Due process
26 requires only that in order to subject a defendant to a judgment in personam, if he be not present within the
27 territory of the forum, he have certain minimum contacts with it such that the maintenance of the suit does
28 not offend traditional notions of fair play and substantial justice." *International Shoe Co. v. Washington*,

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2 326 U.S. 310, 316 (1945). In Washington, three criteria make this determination: (1) the nonresident
3 defendant must purposefully do some act or consummate some transaction in the forum state; (2) the cause
4 of action must arise from, or be connected with, such act or transaction; and (3) the assumption of
5 jurisdiction by the forum state must not offend traditional notions of fair play and substantial justice. *See*,
6 *e.g.*, *Perry v. Hamilton*, 51 Wn. App. 936, 756 P.2d 150 (1988). The defendants own and operate Baby
7 Zack's, a shop located in Milton, within the Western District of Washington. The defendants are therefore
8 subject to personal jurisdiction in Washington. Defendants' motion to dismiss for lack of personal
9 jurisdiction is DENIED.
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12 **4. Motion to Dismiss for Insufficiency of Process**

13 Defendants argue that process was insufficient. Apart from the initial claim that they are moving to
14 dismiss for insufficiency of process according to Fed R. Civ. P. 12(b)(4), they provide neither argument
15 nor supporting caselaw to demonstrate how process was insufficient. Therefore, defendants' motion to
16 dismiss for insufficiency of process is DENIED.
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18 **5. Motion to Dismiss for Insufficiency of Service of Process**

19 Defendants argue that they were improperly served. Citing Fed. R. Civ. Pro. 4(e), they argue that
20 even though Felicia Matheson and Cathy Matheson were personally served and Paul Matheson was served
21 by leaving a copy of the summons and complaint with a person of suitable age and discretion (in this case,
22 Cathy Matheson) at his dwelling house, see Dkt. #s 11, 12, and 13, they were not properly served in
23 accordance with state rules for service. Under Rule 4(e) service may be effected personally or by leaving
24 a copy of the summons and complaint at the defendant's dwelling house with a person of reasonable age
25 and discretion. Both are proper methods of serving a defendant – even a defendant who is an alleged
26 member of a Native American tribe, allegedly living on tribal land. *See* Fed. R. Civ. P. 4(e)(2).
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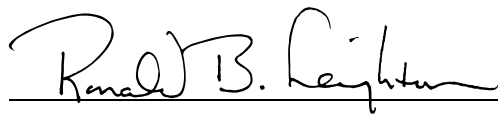
Defendants Cathy Matheson and Felicia Matheson also argue that they were not served with a

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2 summons at the time of service. However, they provide nothing, not even a declaration, to support this
3 assertion. Further, Docket Numbers 11 and 12 demonstrate that they were, in fact, served with a
4 summons. Therefore, defendants' motion to dismiss for insufficiency of service of process is DENIED.
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6 CONCLUSION

7 Defendants' blatantly frivolous motion to dismiss for a variety of reasons under Fed. R. Civ. P.
8 12(b) is DENIED.

9 DATED this 13th day of December, 2006.
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14 RONALD B. LEIGHTON
15 UNITED STATES DISTRICT JUDGE
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